

EXHIBIT M

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

4 NEUROGRAFIX, a California)
corporation; WASHINGTON)
5 RESEARCH FOUNDATION, a)
not-for-profit Washington)
6 corporation,)
)
7 Plaintiffs,)
)
8 vs.) No. CV 10-1990 MRP(RZX)
)
9 SIEMENS MEDICAL SOLUTIONS)
USA, INC., a Delaware)
10 corporation; and SIEMENS)
AKTIENGESELLSCHAFT, a)
11 German corporation,)
)
12 Defendants.)
)

15 DEPOSITION OF MICHAEL E. MOSELEY,
16 Ph.D., taken on behalf of the
17 Plaintiff, at 950 Page Mill Road,
18 Palo Alto, California, at 8:48 a.m.
19 before Janis L. Jennings, Certified
20 Shorthand Reporter No. 3942, CLR, CRP

1 Q. I just want to know -- I don't mean that.
2 I just mean -- I just want to understand what it is.

3 A. Okay.

4 Q. I'm not pushing you one way or the other.

10:14 5 So -- okay. Back in 1993 it's your view
6 that there was no commonly accepted measurement or
7 unit of conspicuity; correct?

8 A. There certainly were a number of papers,
9 and the words -- the word "conspicuity" is used a
10:15 10 lot, but it's a vague understand- -- it's an
11 understanding that something is differentiated from
12 something else with some clarity, but that's as far
13 as it gets.

14 Q. Isn't it true that your view is there was
10:15 15 no commonly accepted scale or unit of conspicuity?

16 If someone said a conspicuity of 2, that didn't mean
17 anything back in 1993, according to you; is that
18 right?

19 A. If someone said the conspicuity of 2 back
10:15 20 in 1993 or today, unless it's within the context of
21 some defined value, I would say it would be the same
22 then as it is now.

23 Q. Okay.

24 A. You would have to define it.

10:16 25 Q. Okay.

1 A. Okay.

2 Q. So the specification relates conspicuity
3 to contrast and, for example, intensity; right? We
4 saw that earlier?

10:16 5 MR. McELDOWNEY: Objection.

6 Mischaracterizes.

7 THE WITNESS: It's not a formal
8 definition, but okay. It's related to contrast.

9 BY MR. FENSTER:

10:16 10 Q. Okay. Does the language "a conspicuity of
11 1.1" suggest a ratio to you?

12 MR. McELDOWNEY: Objection. Vague.

13 THE WITNESS: Yeah. The language "a
14 conspicuity of at least 1.1" means that something
10:16 15 stands out from something else by 10 percent. It
16 could be a comparison of some sort. It could be a
17 ratio.

18 BY MR. FENSTER:

19 Q. Okay. So the claim language that a
10:17 20 conspicuity of the nerve that is at least 1.1 times
21 that of a non-neural tissue, one of skill in the art
22 would understand that that means that some
23 measurement of the nerve is at least 10 -- for
24 example, intensity -- is at least 10 percent greater
10:17 25 than that of the non-neural tissue; is that right?

1 A. One skilled in the art would think that a
2 conspicuity of 1.1 is a measure of something being
3 brighter than something else by 1.1.

4 Q. Okay. And 1.1 means that it is at least
10:18 5 10 percent greater than or 10 percent brighter than;
6 is that right?

7 MR. McELDONNEY: Objection. Vague.

8 THE WITNESS: One way -- is one way of
9 expressing that.

10:18 10 BY MR. FENSTER:

11 Q. If it were 1.2, would you understand that
12 to mean that the nerve has to be 20 percent greater
13 than the non-neural tissue?

14 A. It is one way to express it; right.

10:18 15 Q. Okay. Okay. So a conspicuity of 1.1
16 means that the nerve is at least 10 percent brighter
17 than the non-neural tissue; is that right?

18 MR. McELDONNEY: Objection. Vague.

19 THE WITNESS: I think we have been over
20 that. That's one way of -- that's one way of
21 expressing it.

22 BY MR. FENSTER:

23 Q. Okay. And would you agree that that
24 language that "the conspicuity of the nerve that is
10:19 25 at least 1.1 times that of the non-neural tissue"

1 would suggest to one of skill a comparison between
2 the nerve and the non-neural tissue?

3 A. Yes, it is a -- one way to take that would
4 be the conspicuity of a nerve differs from a
10:19 5 non-neural tissue by some amount.

6 Q. Okay. Let me see if I can genericize this
7 a little bit to see where our departure is. Okay?

8 A. Okay.

9 Q. Let's -- instead of using conspicuity for
10:20 10 nerve, let's use the generic measurable, a
11 measurable of the nerve.

12 A. All right.

13 Q. Is that okay?

14 A. Okay. That's one way.

10:20 15 Q. Okay. So would you agree that the
16 language "a conspicuity of the nerve that is at
17 least 1.1 times that of the non-neural tissue,"
18 means that the measurable of the nerve, whatever
19 that is, must be at least 10 percent greater than
10:21 20 the measurable of the non-neural tissue?

21 MR. MCELDONNEY: Objection. Vague.

22 THE WITNESS: It is vague, but that is one
23 way. You can state it that way. That is not the
24 only way, but you can state it that way.

10:21 25 BY MR. FENSTER:

1 Q. Would one of skill in the art understand a
2 conspicuity of the nerve that's at least 1.1 times
3 that of non-neural tissue to mean a comparison of a
4 measurable of the nerve to a measurable of
10:21 5 non-neural tissue?

6 MR. McELDONNEY: Objection. Vague.

7 THE WITNESS: One skilled in the art would
8 understand a conspicuity is some relation of a nerve
9 and some other tissue. Sure, that's one way of
10:22 10 saying it.

11 BY MR. FENSTER:

12 Q. Okay. And the fact that the conspicuity
13 must be at least 1.1 means that the comparison must
14 show that the nerve measurable is at least 10
10:22 15 percent greater than the non-nerve measurable;
16 correct?

17 A. Yes, that's true. It would be -- the
18 measurable differs from some other measurable;
19 right.

10:22 20 Q. So given that the claim language suggests
21 a comparison between the nerve and the non-nerve and
22 that it's expressed as 1.1, would you agree that one
23 of skill in the art would understand that to refer
24 to or that that can be calculated as a ratio?

10:23 25 MR. McELDONNEY: Objection.

1 Mischaracterizes and compound.

2 THE WITNESS: One skilled in the art would
3 understand conspicuity of 1.1 -- it is what it says,
4 that the nerve measurable, conspicuity, how it's
10:23 5 defined, is at least 1.1, or 10 percent more than a
6 non-neural tissue.

7 Now, that being said -- that being said,
8 one skilled in the art would expect that within this
9 context he or she would be told what is being
10:24 10 compared, what is being measured, how it's being
11 expressed or quantitated or calculated or assessed.
12 1.1 doesn't necessarily mean it's a ratio. I could
13 eyeball it, guesstimate it. I mean, there are
14 different ways of coming at 1.1.

10:25 15 MR. FENSTER: Let me mark as Exhibit 4
16 Exhibit C to your opening report.

17 (Whereupon, Moseley Exhibit 4 was
18 marked for identification.)

19 THE WITNESS: Okay. I see it.

10:25 20 BY MR. FENSTER:

21 Q. Do you recognize Exhibit 4?

22 A. Yes.

23 Q. And what is it?

24 A. Exhibit 4 is a series of regions of
10:25 25 interest or regions that I have marked for a